

## Federal Management Regulation

## § 102-75.1160

### § 102-75.1135 May this delegation of authority to the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education be redelegated?

Yes, the Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education may redelegate any of the authority contained in this delegation to any officers or employees of their respective departments.

## Subpart G—Conditional Gifts of Real Property to Further the Defense Effort

### § 102-75.1140 What is the policy governing the acceptance or rejection of a conditional gift of real property for a particular defense purpose?

Any Federal agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of Chapter 582—Public Law 537 (July 27, 1954) must notify the appropriate GSA regional property disposal office and must submit to GSA a recommendation indicating whether the Government should accept or reject the gift. Nothing in this subpart shall be construed as applicable to the acceptance of gifts under the provisions of other laws. Following receipt of such notification and recommendation, GSA must—

(a) Consult with the interested agencies before it may accept or reject such conditional gifts of real property on behalf of the United States or before it transfers such conditional gifts of real property to an agency; and

(b) Advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

### § 102-75.1145 What action must the Federal agency receiving an offer of a conditional gift take?

Prior to notifying the appropriate GSA regional property disposal office, the receiving Federal agency must acknowledge receipt of the offer in writing and advise the donor that the offer will be referred to the appropriate GSA regional property disposal office. The receiving agency must not indicate ac-

ceptance or rejection of the gift on behalf of the United States at this time. The receiving agency must provide a copy of the acknowledgment with the notification and recommendation to the GSA regional property disposal office.

### § 102-75.1150 What happens to the gift if GSA determines it to be acceptable?

When GSA determines that the gift is acceptable and can be accepted and used in the form in which it was offered, GSA must designate an agency and transfer the gift without reimbursement to this agency to use as the donor intended.

### § 102-75.1155 May an acceptable gift of property be converted to money?

GSA can determine whether or not a gift of property can and should be converted to money. After conversion, GSA must deposit the funds with the Treasury Department for transfer to an appropriate account that will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

## Subpart H—Use of Federal Real Property to Assist the Homeless

### DEFINITIONS

### § 102-75.1160 What definitions apply to this subpart?

*Applicant* means any representative of the homeless that has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

*Checklist or property checklist* means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

*Classification* means a property's designation as unutilized, underutilized, excess, or surplus.

*Day* means one calendar day, including weekends and holidays.

*Eligible organization* means a State, unit of local government, or a private, non-profit organization that provides assistance to the homeless, and that is authorized by its charter or by State

law to enter into an agreement with the Federal Government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

*Excess property* means any property under the control of any Executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 524.

*GSA* means the United States General Services Administration.

*HHS* means the United States Department of Health and Human Services.

*Homeless* means—

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; or

(2) An individual or family that has a primary nighttime residence that is—

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a State law.

*HUD* means the United States Department of Housing and Urban Development.

*ICH* means the Interagency Council on the Homeless.

*Landholding agency* means a Federal department or agency with statutory authority to control real property.

*Lease* means an agreement between either HHS for surplus property, or landholding agencies in the case of non-excess properties or properties subject to the Base Closure and Realignment Act (Pub. L. 100-526, 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a

term of at least one year under the conditions set forth in the lease document.

*Non-profit organization* means an organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices non-discrimination in the provision of assistance.

*Permit* means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

*Property* means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to 40 U.S.C. 524.

*Regional Homeless Coordinator* means a regional coordinator of the Interagency Council on the Homeless.

*Representative of the Homeless* means a State or local government agency, or private non-profit organization that provides, or proposes to provide, services to the homeless.

*Screen* means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

*State Homeless Coordinator* means a State contact person designated by a State to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with the McKinney-Vento Homeless Assistance Act of 1987, as amended (42 U.S.C. 11320).

*Suitable property* means that HUD has determined that a particular property satisfies the criteria listed in §102-75.1185.

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*Surplus property* means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

*Underutilized* means an entire property or portion thereof, with or without improvements, which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

*Unsuitable property* means that HUD has determined that a particular property does not satisfy the criteria in § 102-75.1185.

*Unutilized property* means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable Executive agency or occupied in caretaker status only.

### APPLICABILITY

#### § 102-75.1165 What is the applicability of this subpart?

(a) This part applies to Federal real property that has been designated by Federal landholding agencies as unutilized, underutilized, excess, or surplus, and is, therefore, subject to the provisions of title V of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized):

- (1) Machinery and equipment.
- (2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.
- (3) Properties subject to special legislation directing a particular action.
- (4) Properties subject to a court order.
- (5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).
- (6) Mineral rights interests.
- (7) Air Space interests.
- (8) Indian Reservation land subject to 40 U.S.C. 523.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds, if title to the property is not held by a Federal landholding agency as defined in this part.

### COLLECTING THE INFORMATION

#### § 102-75.1170 How will information be collected?

(a) *Canvass of landholding agencies.* On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus in surveys conducted by the agencies under 40 U.S.C. 524, Executive Order 12512, and subpart H of this part. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) *Agency annual report.* By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that—

(1) Was included in a list of suitable properties published that year by HUD; and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) *GSA inventory.* HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) *Change in status.* If the information provided on the property checklist

changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency must submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the FEDERAL REGISTER. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

#### SUITABILITY DETERMINATION

##### § 102-75.1175 Who issues the suitability determination?

(a) *Suitability determination.* Within 30 days after the receipt of information from landholding agencies regarding properties that were reported pursuant to the canvass described in § 102-75.1170(a), HUD will determine, under criteria set forth in § 102-75.1185, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) *Scope of suitability.* HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) *Environmental information.* HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in § 102-75.1185.

(d) *Written record of suitability determination.* HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of § 102-75.1190(a).

(e) *Property determined unsuitable.* Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the FEDERAL REGISTER of a notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) *Procedures for appealing unsuitability determinations.* (1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the FEDERAL REGISTER that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1-800-927-7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the FEDERAL REGISTER.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in § 102-75.1160.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

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(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to §102-75.1190(a), upon receipt of which HUD will promptly publish the determination in the FEDERAL REGISTER. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

### REAL PROPERTY REPORTED EXCESS TO GSA

#### **§102-75.1180 For the purposes of this subpart, what is the policy concerning real property reported excess to GSA?**

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA that has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to §102-75.1180(g) and will advise HUD of the availability of the property for use by the homeless as provided in §102-75.1180(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in §102-75.1180(c) through §102-75.1180(g).

(c) If a landholding agency reports a property to GSA that has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties

in GSA's inventory, GSA will transmit to HUD within 45 days a response that includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property and, therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the FEDERAL REGISTER, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible non-profit organizations to determine interest in the property in accordance with current regulations. (See GSA Customer Guide to Real Property Disposal.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property that is reported excess to GSA as provided in §102-75.965.

### SUITABILITY CRITERIA

#### **§102-75.1185 What are suitability criteria?**

(a) All properties, buildings, and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) *National security concerns.* A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

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(2) *Property containing flammable or explosive materials.* A property located within 2,000 feet of an industrial, commercial, or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers that provide the heating or power source for the property, and that meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations, and tank trucks are not included in this category, and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) *Runway clear zone and military airfield clear zone.* A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) *Floodway.* A property located in the floodway of a 100-year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) *Documented deficiencies.* A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage, extensive deterioration, friable asbestos, PCBs, natural hazardous substances such as radon, periodic flooding, sinkholes, or earth slides.

(6) *Inaccessible.* A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

(b) [Reserved]

DETERMINATION OF AVAILABILITY

§ 102-75.1190 **What is the policy concerning determination of availability statements?**

(a) Within 45 days after receipt of a letter from HUD pursuant to §102-75.1170(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property—

(i) An intention to declare the property excess;

(ii) An intention to make the property available for use to assist the homeless; or

(iii) The reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in §102-75.1185.

(2) In the case of excess property that had previously been reported to GSA—

(i) A statement that there is no compelling Federal need for the property and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(b) [Reserved]

PUBLIC NOTICE OF DETERMINATION

§ 102-75.1195 **What is the policy concerning making public the notice of determination?**

(a) No later than 15 days after the last-45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the FEDERAL REGISTER a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number: 1-800-927-7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the FEDERAL REGISTER. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD will publish in the FEDERAL REGISTER a list of all properties reported pursuant to §102-75.1170(b).

(e) HUD will publish an annual list of properties determined suitable, but that agencies reported unavailable, including the reasons such properties are not available.

(f) Copies of the lists published in the FEDERAL REGISTER will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

#### APPLICATION PROCESS

##### **§ 102-75.1200 How may representatives of the homeless apply for the use of properties to assist the homeless?**

(a)  *Holding period.* (1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the FEDERAL REGISTER.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60-day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, the name of the organization, and indicate whether it is a public body or a private, non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address: Director, Division of Health Facilities Planning, Public Health Service, Room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60-day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if—

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b)  *Application requirements.* Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following:

(1)  *Description of the applicant organization.* The applicant must document that it satisfies the definition of a “representative of the homeless,” as specified in §102-75.1160. The applicant must document its authority to hold real property. Private, non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2)  *Description of the property desired.* The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions,

except for, in the case of leasing the property, local zoning regulations.

(3) *Description of the proposed program.* The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) *Ability to finance and operate the proposed program.* The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) *Compliance with non-discrimination requirements.* Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-3619) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Non-discrimination in Federally-Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or disability in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) *Insurance.* The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR § 12.9.

(7) *Historic preservation.* Where applicable, the applicant must provide information that will enable HHS to

comply with Federal historic preservation requirements.

(8) *Environmental information.* The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) *Local government notification.* The applicant must indicate that it has informed, in writing, the applicable unit of general local government responsible for providing sewer, water, police, and fire services of its proposed program.

(10) *Zoning and local use restrictions.* The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant applying for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to § 102-75.1200(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) *Scope of evaluations.* Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) *Deadline.* Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) *Evaluations.* (1) Upon receipt of an application, HHS will review it for completeness and, if incomplete, may return it or ask the applicant to furnish any missing or additional required

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information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations that have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraphs (e)(2)(iv) and (e)(2)(v) of this section are of equal importance:

(i) *Services offered.* The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) *Need.* The demand for the program and the degree to which the available property will be fully utilized.

(iii) *Implementation time.* The amount of time necessary for the proposed program to become operational.

(iv) *Experience.* Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) *Financial ability.* The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application, HHS will evaluate all completed applications simultaneously. HHS will rank approved applications based on the elements listed in §102-75.1200(e)(2) and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

### ACTION ON APPROVED APPLICATIONS

#### § 102-75.1205 What action must be taken on approved applications?

(a) *Unutilized and underutilized properties.* (1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year, unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property pursuant to a lease or permit.

(iii) The terms and conditions of the lease or permit document.

(b) *Excess and surplus properties.* (1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with §102-75.965, custody and accountability of the property will remain throughout the lease term with the agency that initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under 40 U.S.C. 550 (education, health, public park or recreation, and historic monument uses) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under 40 U.S.C. 550(c) or (d) (education and health uses).

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the

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decision will transmit to the appropriate committees of the Congress an explanatory statement that details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) *Deeds.* Surplus property may be conveyed to representatives of the homeless pursuant to 40 U.S.C. 550, and section 501(f) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of § 102-75.1200 and in accordance with the requirements of 45 CFR part 12.

(c) *Completion of lease term and reversion of title.* Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal Government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal Government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

### UNSUITABLE PROPERTIES

#### § 102-75.1210 What action must be taken on properties determined unsuitable for homeless assistance?

The landholding agency will defer, for 20 days after the date that notice of a property is published in the FEDERAL REGISTER, action to dispose of properties determined unsuitable for homeless assistance. HUD will inform landholding agencies or GSA, if a representative of the homeless files an appeal of unsuitability pursuant to § 102-75.1175(f)(4). HUD will advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration process regarding unsuitability. Thereafter, or if no appeal has been filed after 20 days, GSA or the appropriate land-

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holding agency may proceed with disposal action in accordance with applicable law.

### NO APPLICATIONS APPROVED

#### § 102-75.1215 What action must be taken if there is no expression of interest?

(a) At the end of the 60-day holding period described in § 102-75.1200(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

### Subpart I—Screening of Federal Real Property

#### § 102-75.1220 How do landholding agencies find out if excess Federal real property is available?

If agencies report excess real and related personal property to GSA, GSA conducts a “Federal screening” for the property. Federal screening consists of developing a “Notice of Availability” and circulating the “Notice” among all Federal landholding agencies for a maximum of 30 days.

#### § 102-75.1225 What details are provided in the “Notice of Availability”?

The “Notice of Availability” describes the physical characteristics of the property; it also provides information on location, hazards or restrictions, contact information, and a date by which an interested Federal agency must respond in writing to indicate a definite or potential need for the property.